

## Internal Revenue Service

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## Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:CORP:03

PLR-129910-11

Date:

April 24, 2012

Distributing =

State A =

Year 1 =

Date 1 =

Date 2 =

Date 3 =

LLC 1 =

Controlled =

Shareholder 1 =

Shareholder 2 =

Shareholder 3 =

Business A =

Business B =

Assets =

a =

b =

c =

d =

e =

f =

i =

j =

Dear :

We respond to your June 16, 2011, request for rulings regarding certain federal income tax consequences of a completed transaction (defined below as the "Transaction"). The information submitted in that request and in subsequent correspondence is summarized below.

The rulings contained in this letter are based upon facts and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. This Office has not verified any of the materials submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process.

Moreover, this Office has not verified any information pertaining to, and has made no determination regarding whether the Transaction: (i) satisfied the business purpose requirement of § 1.355-2(b) of the Income Tax Regulations; (ii) was used principally as a device for the distribution of earnings and profits of any of the distributing corporations, the controlled corporations, or both (see § 355(a)(1)(B) and § 1.355-2(d)); or (iii) was part of a plan (or series of related transactions) pursuant to which one or more persons would acquire directly or indirectly stock representing a 50 percent or greater interest in the distributing corporation or the controlled corporation (see § 355(e) and § 1.355-7).

### SUMMARY OF FACTS

Distributing is a closely held State A corporation incorporated in Year 1 that has two classes of common stock issued and outstanding: i shares of Class A voting common stock and j shares of Class B non-voting common stock. The two classes of common stock have equal value, but only the Class A common stock is entitled to vote. Prior to the Split Off (defined below), Shareholder 1, a closely held State A corporation, owned Distributing stock representing approximately a percent of the voting control and b percent of the value of Distributing; Shareholder 2, a closely held State A corporation, owned approximately c percent of the voting control and d percent of the value of Distributing; and Shareholder 3, a State A limited partnership, owned approximately e percent of the voting control and f percent of the value of Distributing.

Distributing has conducted Business A and Business B, in addition to other business activity, throughout the five-year period ending on the date of the Split Off. The taxpayer has submitted financial information indicating that Business A and Business B as conducted by Distributing had gross receipts and operating expenses representing the active conduct of a trade or business for each of the five years preceding the Split Off.

For what have been represented as valid business purposes, the following transaction (the “Transaction”) has been consummated:

- (i) Distributing formed LLC 1 as a State A limited liability company disregarded as an entity separate and apart from its owner for federal income tax purposes. Distributing owned all of LLC 1’s membership interests.
- (ii) Distributing transferred the assets and liabilities of Business A to LLC 1.
- (iii) Distributing formed Controlled, a State A corporation. Controlled has one class of common stock outstanding, which was owned by Distributing upon formation.

- (iv) On Date 2, Distributing contributed all of the membership interests of LLC 1, \$g in Assets and cash, and \$h in notes receivable to Controlled (the "Contribution").
- (v) On Date 3, Controlled distributed all of the stock of Controlled to Shareholder 1 in exchange for all of Shareholder 1's Distributing common stock (the "Split Off").

Steps (i) through (iii) were completed within the five-year pre-distribution period with respect to the Split Off.

### **REPRESENTATIONS**

The following representations have been made with respect to the Transaction:

- (a) Distributing and Controlled each paid their own expenses, if any, incurred in connection with the Transaction.
- (b) The fair market value of the Controlled stock received by Shareholder 1 was approximately equal to the fair market value of the Distributing common stock surrendered by Shareholder 1 in the exchange.
- (c) No part of the consideration that was distributed by Distributing in the Split Off was received by a shareholder as a creditor, employee, or in any capacity other than that of a shareholder of Distributing.
- (d) No intercorporate debt existed between Distributing and Controlled at the time of, or subsequent to, the Split Off. Any indebtedness, if any, owed by Controlled to Distributing on completion of the Split Off did not constitute stock or securities.
- (e) The total fair market value of the assets that Distributing transferred to Controlled did not exceed the sum of (i) the amount of any liabilities assumed (within the meaning of § 357(d)) by Controlled in connection with the Contribution, (ii) the amount of any liabilities owed to Controlled by Distributing that were discharged or extinguished in connection with the Contribution, and (iii) the amount of cash and the fair market value of any other property (other than stock and securities permitted to be received under § 361(a) without recognition of gain) received by Distributing from Controlled in connection with the Contribution. The fair market value of the assets contributed to Controlled in the Contribution exceeded the amount of its liabilities immediately after the exchange.

- (f) The total adjusted bases and the fair market value of the assets transferred to Controlled by Distributing each equaled or exceeded the sum of the liabilities assumed by Controlled plus any liabilities to which the transferred assets were subject. The liabilities assumed in the transaction and the liabilities to which the transferred assets were incurred in the ordinary course of business and were associated with the assets being transferred.
- (g) The five years of financial information submitted on behalf of Distributing was representative of Distributing's operations of Business A and Business B at the time of the Split Off, and, with regard to Distributing, there have been no substantial operational changes since the date of the last financial statements submitted.
- (h) Following the Split Off, Distributing and Controlled each continue, independently and with its separate employees, the active conduct of its respective business, both of which were conducted by Distributing prior to consummation of the Transaction.
- (i) The Split Off was carried out for the following corporate business purpose: to resolve managerial disputes regarding the business operations of Distributing. The Split Off of the stock, or stock and securities, of Controlled was motivated, in whole or substantial part, by one or more of these corporate business purposes.
- (j) Neither Business A nor Business B conducted by Distributing nor control of an entity conducting these businesses was acquired during the five-year period ending on the date of the Split Off in a transaction in which gain or loss was recognized or treated as recognized under in whole or in part. Throughout the five year period ending on the date of the Split Off, Distributing was the principal owner of the goodwill and significant assets of Businesses A and B.
- (k) The Split Off was not used principally as a device for the distribution of the earnings and profits of Distributing or Controlled or both.
- (l) Payments made in connection with all continuing transactions, if any, between Distributing and Controlled will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.
- (m) The Transaction is not part of a plan or series of related transactions (within the meaning of § 355(e)) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater

interest (within the meaning of § 355(d)(4)) in Distributing or Controlled (including any predecessor or successor of any such corporation).

- (n) No two parties to the transaction were investment companies as defined in §368(a)(2)(F)(iii) and (iv) or § 351(e) and § 1.351-1(c)(1)(ii) at the time of the Transaction.
- (o) Immediately after the transaction (as defined in § 355(g)(4)), neither Distributing nor Controlled was a disqualified investment corporation (within the meaning of § 355(g)(2)).
- (p) For purposes of § 355(d), immediately after the Split Off, no person (determined after applying the rules of § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Distributing stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Distributing stock, that was acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Split Off.
- (q) For purposes of § 355(d), immediately after the Split Off, no person (determined after applying the rules of § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Controlled stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Controlled stock that was either (i) acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Split Off or (ii) attributable to distributions on Distributing stock, that was acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Split Off.
- (r) Immediately after the Split Off (taking into account § 355(g)(4)), neither Distributing nor Controlled was a disqualified investment corporation (within the meaning of § 355(g)(2)).
- (s) Distributing neither accumulated its receivables nor made extraordinary payment of its payables in anticipation of the Transaction.
- (t) Since Date 3, Distributing has consistently treated the transfer of assets and liabilities to Controlled followed by a Split Off as having qualified as a reorganization within the meaning of § 368(a)(1)(D) and the Split Off as having qualified under § 355 for all federal income tax purposes.

## **RULINGS**

Based solely on the information submitted and the representations set forth above, we rule as follows on the Contribution and Split Off:

- (1) The Contribution, followed by the Split Off, qualified as a reorganization within the meaning of § 368(a)(1)(D). Distributing and Controlled each was a “party to a reorganization” within the meaning of § 368(b).
- (2) Distributing did not recognize any gain or loss on the Contribution (§357(a) and § 361(a)).
- (3) Controlled did not recognize any gain or loss on the Contribution (§ 1032(a)).
- (4) Controlled's basis in each asset received in the Contribution equaled the basis of that asset in the hands of Distributing immediately before its transfer (§ 362(b)).
- (5) The holding period Controlled had in each asset received in the Contribution included the period during which Distributing held that asset (§ 1223(2)).
- (6) Distributing did not recognize any gain or loss on the Split Off (§ 361(c)).
- (7) Shareholder 1 did not recognize any gain or loss (and no amount is includible in its income) upon the receipt of Controlled stock in exchange for all of its Distributing stock in the Split Off (§ 355(a)(1)).
- (8) The basis of the Controlled stock in the hands of Shareholder 1 after the Split-Off equaled the basis of the Distributing shares surrendered in exchange therefor (§ 358(a)(1)).
- (9) The holding period of the Controlled stock received by Shareholder 1 pursuant to the Split-Off included the holding period of the Distributing shares surrendered by Shareholder 1, provided such stock was held as a capital asset on the date of the Split-Off (§ 1223(1)).
- (10) Earnings and profits, if any, were allocated between Distributing and Controlled in accordance with § 312(h) and § 1.312-10(a).

### **CAVEATS**

Except as expressly provided herein, we express no opinion about the tax treatment of the Transaction under other provisions of the Code or regulations, or about the tax treatment of any conditions existing at the time of, or effects resulting from, the

Transaction not specifically covered by the above rulings. In particular, we do not express an opinion regarding whether the Split Off: (i) satisfied the business purpose requirement of § 1.355-2(b); (ii) was used principally as a device for the distribution of the earnings and profits of Distributing or Controlled; or (iii) was part of a plan (or a series of related transactions) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50 percent or greater interest in Distributing or Controlled (see § 355(e) and § 1.355-7). We also express no opinion regarding the federal income tax consequences of steps (i) through (iii) in the Transaction and any non-arm's length transactions between any of the parties to the Transaction.

### **PROCEDURAL MATTERS**

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this Office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this Office, a copy of this letter is being sent to your authorized representative.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

Sincerely,

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Filiz A. Serbes  
Chief, Branch 3  
Office of Associate Chief Counsel (Corporate)

cc: